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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION ONE

THE REGENTS OF THE UNIVERSITY  
OF CALIFORNIA,

Plaintiff and Respondent.

v.

HARRY J. WILLIBY,

Defendant and Appellant,

A105125

(Alameda County  
Super. Ct. No. C-020802-0)

Harry J. Williby appeals an order denying his motion to vacate a permanent injunction prohibiting harassment of employees. We affirm.

PROCEDURAL BACKGROUND

On June 6, 2000, the Regents of the University of California (hereafter Regents) filed a petition for an injunction prohibiting Williby from harassing six named employees. Attached to the petition were a series of declarations by employees and Corey White, a sergeant in the Campus Police Department at the University of California at Berkeley (UC Berkeley). The employee declarations described verbal outbursts, violent threats, expressions of unfounded suspicion, and other uncontrolled and irrational behavior on the part of Williby while he was employed as a research assistant at the Institute of Urban and Regional Development at the UC Berkeley campus. The White declaration states that on May 8, 2000, Williby violently attacked a female student with whom he had minimal contact, hitting her several times on the head and trying to shove

her head into a glass display case. He was later arrested and held in custody pending a criminal investigation.

On June 6, 2000, the court issued a temporary restraining order and set a hearing for the petition. At a hearing on June 23, 2000, the court extended the temporary restraining order for one year. Following a hearing on June 22, 2001, the trial court issued an order again extending the injunction until June 22, 2003. Williby filed a notice of appeal from the order entered June 22, 2001, but the appeal was dismissed on February 27, 2002, for failure to file a docketing statement. On February 27, 2003, Williby filed a motion in the trial court to vacate the order granting an injunction entered June 22, 2001. Following a further hearing, the court filed on June 11, 2003, a memorandum of decision denying the motion. Williby appealed the decision, and this court affirmed.<sup>1</sup>

On June 16, 2003, the Regents filed a new petition requesting an injunction prohibiting violence or threats of violence against its employees. The court set a hearing for June 30, 2003. Williby filed an objection to the petition but did not appear at the hearing. The matter was continued twice and ultimately set for August 1, 2003. In advance of the hearing, the Regents filed a reply brief and a request for judicial notice of a first amended cross-complaint filed by defendant Harry Williby in *Oparaocha v. Regents et al.* (Alameda County Superior Court Case No. 849858-4).

Williby appeared by telephone conference call at the hearing and restated the arguments in his objection. When Williby claimed that he had not received the Regents' reply brief, the court granted a further extension. Before the continued hearing was held, Williby served a motion to strike the petition under the anti-SLAPP statute, Code of Civil Procedure section 425.16, which was dated August 29, 2003. Following the hearing, the court ordered a briefing schedule on the motion. On November 24, 2003, the court denied the anti-SLAPP motion as untimely and granted the petition extending the injunction for three years until June 21, 2006. A formal written order extending the

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<sup>1</sup> *The Regents of the University of California v. Williby* (Apr. 27, 2004, A103142) [nonpub. opn.].

injunction was filed December 19, 2003. Williby filed a notice of appeal from the order granting the injunction claiming inter alia that the court erred in denying the anti-SLAPP motion.

## DISCUSSION

### A. Timeliness of anti-SLAPP motion

The trial court properly denied the anti-SLAPP motion as untimely. Code of Civil Procedure section 425.16, subdivision (f), provides: “The special motion may be filed within 60 days of the service of the complaint or, in the court’s discretion, at any later time upon terms it deems proper.” (See *Decker v. U.D. Registry, Inc.* (2003) 105 Cal.App.4th 1382, 1387.) On June 23, 2003, the petition was served on Williby. The anti-SLAPP motion was dated August 29, 2003. Though the record does not reveal when, or if, it was filed, we are obliged as a court of review to indulge in all presumptions in favor of the trial court’s ruling, and therefore infer that it was filed not earlier than August 29, 2003. (*Walling v. Kimball* (1941) 17 Cal.2d 364, 373.) Williby notes that he filed objections to the petition on June 26, 2003, which stated that “said petition violates Code of Civ. Proc., § 425.16 et seq.” This passing reference to Code of Civil Procedure section 425.16 clearly does not constitute a motion under the statute. Alternatively, he argues that the Regents’ reply brief dated July 30, 2003, bolstered his case under the anti-SLAPP statute and therefore his right to strike began to run when it was filed, but the motion to strike was directed at the petition, not briefing in support of it.

The statute does give the trial court discretion to accept the filing of an anti-SLAPP statute at a later time, but, as stated in *Lam v. Ngo* (2001) 91 Cal.App.4th 832, 840, “the provision specifying that the *court* may allow later filings of the motion still has consequences. There is no *right* to file an anti-SLAPP suit motion beyond the deadline. It can then only be ‘filed’ ‘in the court’s discretion.’ ” Williby has not shown that the court abused its discretion.

“Anti-SLAPP statutes such as section 425.16 provide a procedural remedy to expose and dismiss at an early stage . . . nonmeritorious actions which chill, inter alia,

‘the valid exercise of the constitutional rights of freedom of speech . . . .’ ” (*Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 37 Cal.App.4th 855, 858-859.) The proceedings at issue here began in June 2000, and have involved a long series of court appearances. The petition for a permanent injunction was served June 23, 2003, and reflects this history. Williby had an opportunity to claim the protection of the anti-SLAPP statute by a proper motion at the time he filed his objections to the petition on June 26, 2003. By the time he filed the anti-SLAPP motion, the court had already held a hearing on the merits of the petition on August 1, 2003. Under these facts, we conclude that the trial court acted well within its discretion in denying the motion to strike as untimely.

#### B. Permanent Injunction

Williby next maintains that the trial court abused its discretion in granting the Regents’ petition to extend the injunction for an additional three years. Code of Civil Procedure section 527.8, subdivision (f) authorizes an injunction “[i]f the judge finds by clear and convincing evidence that the defendant engaged in unlawful violence or made a credible threat of violence, an injunction shall issue prohibiting further unlawful violence or threats of violence.” “The trial court’s decision to grant a permanent injunction rests within its sound discretion and will not be disturbed on appeal absent a showing of a clear abuse of discretion.” (*Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 912.) On appeal, an appellate court will review the factual basis for the decision “under a substantial evidence standard. Our power in this regard ‘*begins and ends* with the determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the finding of fact.’ [Citation.]” (*Ibid.*)

We find that the record amply supports issuance of the injunction. In support of its petition, the Regents submitted a declaration of Lt. James West of the UC Berkeley Campus Police Department and Michael Goldstein, an attorney in the office of general counsel. The West declaration chronicled a lengthy record of Williby’s threatening and disruptive conduct directed at employees and students of the University of California at

Berkeley. The Goldstein declaration drew the court’s attention to the possibility that Williby could be released from prison for his conviction of assault on a former student.

Since the petition sought to extend the existing injunction for an additional three years, the record supporting the issuance of that injunction is also relevant. We note that the initial application for injunctive relief was supported by a series of declarations of students who had been directly threatened by Williby and set forth a description of conduct clearly presenting a credible threat of violence. Prior to the hearing on August 1, 2003, Williby filed a 112-page cross-complaint that contained a remarkable revelation of his obsessive concern with perceived unfair treatment by University employees. While we agree that the injunction should not be predicated solely on a pleading in a related action (Code Civ. Proc., § 527.8, subd. (c)) , we consider that the trial court could properly take judicial notice of this pleading as evidence that the concerns underlying the original injunction remained valid.

While Williby’s assault on a female student on May 8, 2000, was a most violent act leading to issuance of injunctive relief, this is not a case in which the injunction was based on “a single act of unlawful violence.” (*Russell v. Douvan* (2003) 112 Cal.App.4th 399, 404.) The record discloses a lengthy history of menacing conduct that clearly affords substantial evidence in support of the injunction.

The judgment is affirmed.

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Swager, J.

We concur:

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Marchiano, P. J.

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Stein, J.